



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[EPA-R08-RCRA-2018-0554; FRL-9986-24-Region 8]

North Dakota: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct Final Rule.

SUMMARY: North Dakota has applied for final authorization of a revision to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). The revision has two parts, both of which relate directly to the creation of the North Dakota Department of Environmental Quality (NDDEQ) by the North Dakota Legislature, and the impending transfer of authority, power, and duties relating to environmental quality from the North Dakota Department of Health (NDDH) to the NDDEQ. The first part of the program revision is the complete transfer of all hazardous waste program rules from Title 33 Article 24 of the North Dakota Administrative Code (NDAC) to NDAC Title 33.1 Article 24. The second part is replacing all references to NDDH with NDDEQ. No other changes are being made to the hazardous waste program rules in this revision. The EPA has reviewed the application and determined that North Dakota's hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. The EPA is authorizing the state program revision through this direct final rule. The EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial action and does not anticipate adverse comments. However, in the proposed rules section of this Federal Register, the EPA is publishing a separate document that will serve as a proposal to authorize the revision should the

Agency receive adverse comment. Unless the EPA receives adverse written comments during the review and comment period, the decision to authorize North Dakota's hazardous waste program revision will take effect as provided below.

DATES: This final rule is effective on March 15, 2019, unless the EPA receives adverse written comment by **[insert date 30 days after publication in the Federal Register]**. Should the EPA receive such comments, it will publish a timely document either: withdrawing the direct final publication or affirming the publication and responding to comments.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. **EPA-R08-RCRA-2018-0554**. All documents in the docket are listed on the <http://www.regulations.gov> website. Although listed in the index, some information is not publicly available, e.g., CBI or other information, the disclosure of which is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through <http://www.regulations.gov> or in hard copy at: EPA Region 8, from 8:00 a.m. to 4:00 p.m., 1595 Wynkoop Street, Denver, Colorado 80202-1129; contact: Moye Lin, phone number (303) 312-6667, or the North Dakota Department of Health (NDDH) from 9:00 a.m. to 4:00 p.m., 918 East Divide Avenue, 3rd Floor, Bismarck, North Dakota 58501-1947, phone number (701) 328-5166. The public is advised to call in advance to verify business hours.

FOR FURTHER INFORMATION CONTACT: Moye Lin, Resource Conservation and Recovery Program, EPA Region 8, 1595 Wynkoop Street, Denver, Colorado 80202-1129; phone number (303) 312-6667; Email address: lin.moye@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Authorization of Revisions to North Dakota's Hazardous Waste Program

A. Why are revisions to state programs necessary?

States which have received final authorization from the EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the federal program. As the federal program changes, states must change their programs and ask the EPA to authorize the changes. Changes to state programs may be necessary when federal or state statutory or regulatory authority is modified or when certain other changes occur. Most commonly, states must change their programs because of changes to the EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 268, 270, 273 and 279. When states make other changes to their regulations, it is often appropriate for the states to seek authorization for the changes.

B. What decisions have we made in this rule?

We conclude that North Dakota's application to revise its authorized program meets all of the statutory and regulatory requirements established by RCRA. Therefore, we grant North Dakota final authorization to operate its hazardous waste program with the changes described in the authorization application.

The State of North Dakota adopted state Senate Bill No. 2327 (S.L. 2017, ch. 199, § 75), which separated the Environmental Health Section from the North Dakota Department of Health (NDDH) to create a standalone North Dakota Department of Environmental Quality (NDDEQ). Per S.L. 2017, ch. 199, Section 75, the transfer of authority, power, and duties related to environmental quality from NDDH to NDDEQ will become effective upon the North Dakota Legislative Council's receipt of the certification by the Chief of the Environmental Health Section of the State Department of Health attesting that all necessary federal approvals have been obtained and all necessary federal and other agreements have been amended to ensure the state

will continue to meet the authorization requirements it currently satisfies after the transfer of authority, powers and duties from the NDDH to the NDDEQ. This direct final rule constitutes EPA approval of the transfer of all duties and responsibilities of the state relating to the existing federal hazardous waste program in North Dakota from the NDDH to the NDDEQ.

North Dakota will continue to have responsibility for permitting Treatment, Storage, and Disposal Facilities (TSDFs) within its borders (except in Indian country), and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (HSWA). New federal requirements and prohibitions imposed by federal regulations that the EPA promulgates under the authority of HSWA after this action, if any, will be effective in North Dakota on the effective date of the federal rule. Thus, the EPA will implement those requirements and prohibitions in North Dakota, including issuing permits, until North Dakota applies for authorization of equivalent state rules and those rules are authorized.

C. What is the effect of this authorization decision?

While there will be no substantive changes to the federal hazardous waste program requirements if North Dakota is authorized for these changes, NDDEQ will become the state department responsible for implementation of the federal hazardous waste program instead of NDDH. This change should have little to no practical effect on the regulated community in North Dakota. Additionally, pursuant to section 3006 of RCRA, the regulated community must comply with HSWA regulations issued by the EPA for which the state has not received authorization. North Dakota will continue to have enforcement responsibilities under its state hazardous waste program for violations of such program, and the EPA continues to retain its authority under RCRA sections 3007, 3008, 3013, and 7003, which include, among others, authority to:

- Conduct inspections and require monitoring, tests, analyses, or reports;
- Enforce RCRA requirements; suspend or revoke permits; and,
- Take enforcement actions regardless of whether North Dakota has taken its own actions.

This action to approve these provisions would not impose additional requirements on the regulated community because the regulations for which North Dakota is requesting authorization are already effective under both state and federal law and are not changed by our authorization of these revisions.

D. For what has North Dakota previously been authorized?

North Dakota initially received final authorization on October 5, 1984, effective October 19, 1984 (49 FR 39328), to implement the RCRA hazardous waste management program. We granted authorization for changes to their program on: June 25, 1990, effective August 24, 1990 (55 FR 25836); May 4, 1992, effective July 6, 1992 (57 FR 19087); April 7, 1994, effective June 6, 1994 (59 FR 16566); January 19, 2000, effective March 20, 2000 (65 FR 02897); September 26, 2005, effective November 25, 2000 (70 FR 56132); February 14, 2008, effective April 14, 2008 (73 FR 8610); and October 30, 2018, effective October 30, 2018 (83 FR 54521).

The EPA understands that the state intends to take the necessary additional steps, as specified in S.L. 2017, ch. 199, Section 75, to ensure that NDDEQ comes into existence and that the NDDEQ rules are effective as a matter of state law so that the rules also and the NDDEQ will become federally enforceable prior to the effective date of EPA's approval of these revisions.

Further background on the new department is documented in the state Program Description dated September 2018. Therefore, once this rule is effective and for the purposes of administration of the state's authorized hazardous waste program, references to the NDDH Division of Waste

Management of the Environmental Health Section will be to the NDDEQ. For further legislative history on the new department, see North Dakota Session Laws of 2017 [S.L. 2017, ch. 199, § 75].

The NDDEQ has primary responsibility for administration of laws and regulations concerning hazardous waste under the North Dakota Hazardous Waste Management Act (codified in Chapter 23.1-04 of the North Dakota Century Code [N.D.C.C.]). The NDDEQ is also authorized to administer the federal hazardous waste program, including jurisdiction over the generation, discharge, storage, treatment, handling, transportation, reclamation, or disposal of hazardous waste.

The NDDEQ has the rules necessary to implement the federal Hazardous Waste Program from the Base program through RCRA Cluster XXIV revisions promulgated through June 30, 2015, as found in NDAC Title 33.1 Article 24 Hazardous Waste Management. The NDDEQ authority to incorporate federal rules by reference can be found at N.D.C.C. § 23.1-01-04(1) and adoption of the hazardous waste rules in general are pursuant to the statutory provisions enacted in 2018 at N.D.C.C. Title 23.1.

E. What changes are we authorizing with this action?

The State of North Dakota submitted a final complete program revision application on July 31, 2018 and is seeking re-authorization of their complete program in accordance with 40 CFR 271.21 due to the transfer of the approved hazardous waste program from the NDDH to the NDDEQ as described in section I.D. above. North Dakota's program consists of regulations which specifically govern the federal hazardous waste program from base program authorization in 1984 through June 30, 2015 (RCRA Cluster XXIV).

All revisions to the applicable hazardous waste program are federally approved as of the

effective date of this action. The EPA's understanding is that, per S.L. 2017, ch. 199, Section 75 (S.B. 2327), the state plans to rely on the date the EPA signs this notice for purposes of notifying the state legislature that the EPA has approved these revisions, which will provide for the transfer authority from NDDH to NDDEQ to be effective under state law. The EPA also understands that there are some programs that will not be required to be a part of this State Legislature approval. Unless and until the NDDEQ rules and agency become fully effective under state and federal law, for purposes of federal law, the EPA recognizes the state's program as currently approved under the North Dakota Department of Health.

We now make a final decision, subject to receipt of written comments that raise concerns with this action, that North Dakota's hazardous waste program satisfies all of the requirements necessary to qualify for final authorization. Therefore, we grant North Dakota DEQ final authorization for the state's hazardous waste program.

F. Who handles permits after the final authorization takes effect?

North Dakota will continue to issue permits for all the provisions for which it is authorized and will administer the permits it issues. The EPA will continue to administer any RCRA hazardous waste permits or portions of permits which were issued by the EPA prior to the effective date of this authorization.

G. How does this action affect Indian country (18 U.S.C. 1151) in North Dakota?

The EPA's approval of the North Dakota Hazardous Waste Program (state program) does not extend to Indian country, as defined in 18 U.S.C. 1151. Indian country in North Dakota generally includes:

1. Lands within the exterior boundaries of the following Indian reservations located within North Dakota:

- a. Fort Berthold Indian Reservation
 - b. Spirit Lake Reservation
 - c. Standing Rock Sioux Reservation
 - d. Turtle Mountain Indian Reservation
2. Any land held in trust by the United States for an Indian tribe, and
 3. Any other areas that are “Indian country” within the meaning of 18 U.S.C. 1151.

Therefore, this program revision does not extend to Indian country; the EPA will retain responsibilities under the Resource Conservation Recovery Act of 1976 (RCRA) in Indian country.

II. Administrative Requirements

The Office of Management and Budget (OMB) has exempted this action from the requirements of Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011). This action authorizes state requirements for the purpose of RCRA section 3006 and imposes no additional requirements beyond those imposed by state law. Therefore, this action is not subject to review by OMB. This action is not an Executive Order 13771 (82 FR 9339, February 3, 2017) regulatory action because actions such as today’s authorization of North Dakota’s revised hazardous waste program under RCRA are exempted under Executive Order 12866. Accordingly, I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). Because this action authorizes pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538). For the same

reason, this action also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely authorizes state requirements as part of the state RCRA hazardous waste program without altering the relationship or the distribution of power and responsibilities established by RCRA.

This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant, and it does not make decisions based on environmental health or safety risks. This action is not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866.

Under RCRA 3006(b), the EPA grants a state’s application for authorization as long as the state meets the criteria required by RCRA. It would thus be inconsistent with applicable law for the EPA, when it reviews a state authorization application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this action, the EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. The EPA has complied with

Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the action in accordance with the “Attorney General’s Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings” issued under the executive order. This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). “Burden” is defined at 5 CFR 1320.3(b).

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. Because this rule authorizes pre-existing state rules which are at least equivalent to, and no less stringent than existing federal requirements, and imposes no additional requirements beyond those imposed by state law, and there are no anticipated significant adverse human health or environmental effects, the rule is not subject to Executive Order 12898.

The Congressional Review Act, 5 U.S.C. 801 – 808, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this document and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication in the Federal Register. A major rule cannot take effect until 60 days

after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2). This action will be effective on March 15, 2019.

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

Dated: December 13, 2018.

Douglas Benevento,
Regional Administrator,
Region 8.

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